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REVIEW OF THE OPERATION OF AND EXPERIENCE ARISING FROM THE APPLICATION AND IMPLEMENTATION OF THE SET OF MULTILATERAL AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Replies by States and regional groupings on steps taken to meet their commitment to the Set of Principles and Rules

Note by the UNCTAD secretariat

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GHANA

1. The reply of the Government of Ghana is summarized below.

2. Although Ghana subscribed to the objectives and principles of the Set, it had neither the legislation to control or regulate restrictive business practices nor the trained personnel to administer restrictive business practice legislation.

3. In order to achieve the objectives of the Set as outlined in section A of the Set, and within the content of the dismantling of import and other controls by the Government through its trade liberalization policy, the initiative was taken in 1989 to request technical assistance from UNCTAD as provided for in section F.6 of the Set.

4. A comprehensive programme was drawn up for funding under the UNDP umbrella project. The programme was divided into three phases:

(i) A national seminar;

(ii) Drafting of RBP legislation (with an UNCTAD expert joining a Ghanaian drafting team) and the setting up of a Control Authority; and

(iii) A seminar for the business community and a training programme for the Control Authority.

5. The national seminar was held in Accra from 25 to 27 February 1991 with the assistance of resource personnel from the RBP Unit of the UNCTAD secretariat, as well as from the Bundeskartellamt (German Federal Cartel Office), Berlin. Participants were drawn from governmental and non-governmental organizations, as well as the business community.

6. In the first week of October, 1991, an UNCTAD consultant and a staff member of the RBP Unit arrived in the country for a working visit on the RBP legislation. They were assisted by the local coordinating committee on RBP legislation, comprising personnel from: the Registrar-General's Department; CFAO, a private company and member of the Chamber of Commerce; the Attorney-General's Department; and the Ministry of Trade and Tourism.

7. After the coordinating Committee and the UNCTAD experts had completed their work, the draft law was referred to the Attorney-General's Department and to other relevant quarters for comments. This was followed by a study tour to the United Kingdom which culminated in a meeting in London on 19 May 1992 of the UNCTAD experts, two Ghanaian experts from the Attorney-General's Department and the project coordinator from the Ministry of Trade and Tourism to discuss the comments.

8. The group later visited the Office of Fair Trading in London and the Standards Board Office in Croydon, and it also stopped over in Geneva to hold discussions with the RBP Unit of UNCTAD on the status of the RBP programme in Ghana. As a follow-up to this important tour, final work is being done on the text of the draft legislation.

9. It is expected that the law will be submitted to the Government for promulgation, after which the RBP Control Authority will be set up.

THAILAND

10. The Government of Thailand transmitted the following information on "The progress of RBP legislation amendment in Thailand".

I. Background

11. Due to the development of businesses which have acquired much broader and deeper dimensions, the Ministry of Commerce in Thailand decided to form a working committee to reform its RBP legislation, namely the Price Fixing and Anti-Monopoly Act, 1979. In order to have legislation which would be able to cope with the complicated business practices of today and which would also be in line with the legislation of the developed countries, in 1991 the Ministry organized two seminars aimed at seeking broader views from all parties concerned, including government agencies, business sectors, academics, NGOs, and the media. In addition, the Ministry also participated in observation programmes on antimonopoly laws in the United States and in Germany.

II. The draft amendment

12. After a period of eight months, the working committee completed its work and finalized the draft amendent, whose provisions are described below.

1. Form of law to apply

13. The existing Price Fixing and Anti-Monopoly Act, 1979, would be divided into two laws, namely the Price Fixing Act and the Anti-Monopoly Act. This proposed change is due to the differences which exist between the Price Fixing and the Anti-Monopoly chapters in the existing law, inasmuch as the Price Fixing Act is aimed at protecting the interests of consumers, whereas the Anti-Monopoly Act is designed to prevent the formation of monopolies and also to promote fair trade.

2. Substance of the reform

14. Most of the price fixing provisions would remain unchanged, except for some modifications made for reasons of clarity and greater practicality in compliance with the changing situation. On the other hand, the anti-monopoly principle would be switched from its original "structural control" to a more flexible "conduct control" principle in order to monitor entrepreneurial practices and prevent monopolies or RBPs. This would eventually help to bring about a climate of free and fairer trade.

15. According to the draft Anti-Monopoly Act, the reform would cover with the following:

(a) Committee

16. Unlike the single Central Committee on Price Fixing and Anti-Monopoly under the previous

law, four Committees would be set up in order to facilitate a more efficient system for the preservation of fairness for every party concerned. They would be the Committee on Anti-Monopoly, the Committee of Appeal, the Sub-Committee of Experts, and the Sub-Committee of Inquiry.

(b) The adoption of conduct control approach

17. The conduct control approach would be adopted to deal with the abuse of market dominating power - excluding or destroying of other competitors, mergers aimed at monopolizing the market or reducing competition, arrangements to reduce or limit competition, or any other kind of unfair practices. Moreover, the Committee on Anti-Monopoly would have the power to suspend or change monopolistic or restrictive business practices whenever necessary.

(c) Private enforcement

18. The draft also includes a provision for private enforcement which would entitle injured persons and consumers to sue for damages.

III. The Progress of Legislative Process

19. The two drafts have already been approved by the Cabinet, but due to the termination of Parliament, the enactment of the drafts had to be posponed. However, it is expected that the two drafts will be enacted in the near future after a new general election is held.